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CIVILIAN CONTROL OF ARMED FORCES CHALLENGES FOR THE EUROPEAN UNION

by

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**CIVILIAN CONTROL OF ARMED FORCES – CHALLENGES FOR THE
EUROPEAN UNION**

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ABSTRACT

Since 1989 the study of democratic civil military relations has undergone a revival of the formation of new theory. These concepts deal with civilian control of armed forces at a national level. Since after the end of the Cold War, the European employment of military forces within a multinational framework became a regularity, it is now pertinent to ask whether and how these concepts fit at the international level. The construction of Europe and the rise of new security challenges raises the issue of democratic civil military relations in the European Union. The present thesis analyses classical and new theories of civil military relations and applies these to the current issue of security policy and the formation of strategy for a supra-national European Union.

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I. INTRODUCTION

In the 20th century, several scholars have offered definitions of civil-military relations and how to establish optimal balance between civilian and military authorities. At the start of this century, the European Union (EU) has begun the final process of organizing its security and defense policy. It has developed since 1991 a legal framework for its Common Foreign and Security Policy (CFSP) with the treaties of Maastricht, Amsterdam, and Nice. The last entered into force on 1 February 2003. The Union also established its own military and civilian crisis management capabilities, with the European Council decisions at Helsinki in December 1999 and Feira in June 2000. Furthermore, the EU established new institutions, namely the Political and Security Committee (PSC), the Military Committee (EUMC), the Military Staff (EUMS), and the Civilian Crisis Management Committee (CIVCOM). In December 2001, at Laeken, the Heads of State and Government announced that the EU “is now able to conduct some crisis management operations.”¹ This gives evidence that the EU is willing to accept responsibility as an international military actor. The EU has accepted that the goals of a modern security policy have changed from the traditional tasks for armed forces, the protection of independence and territorial integrity, toward an increasing focus on multilateral and multinational actions in support of crisis management and the promotion of stability. Many of the requirements set forth by civil-military scholars for civilian control of armed forces are being discussed during the decision making process of an EU constitution by the European Convention. Because of the unique character of the EU and its unique path of development, the manner in which the European Union will execute civilian control appears to be somewhat different than the models set forth by civil-military scholars who have written primarily about national political systems. Nevertheless, the question, which has to be answered, is: “which institutions are responsible for civilian control of EU-led military missions?”

This thesis deals in Chapter II with the theoretical framework of civilian control. First it provides a definition of civilian control of armed forces and deals with theories of

¹ See Presidency Conclusion – European Council Meeting in Laeken 14 and 15 December 2001 Internet Website Website <http://ue.eu.int/pressData/en/ec/68827.pdf> from 31 May 2003

civilian control of armed forces, their counterarguments and how these theoretical frameworks correspond with the European Union. In addition, it describes the foundations of civilian control, lists specific elements required for effective civilian control of armed forces, and compares these foundations with recent development within the European Union. Lastly, it argues that in respect to the European Union, the terms “civilian control” and “democratic control” are interchangeable.

Chapter III describes the parliamentary dimension of civilian control. In so doing, it compares the different approaches and possibilities of the national parliaments of the Member States of the European Union, to participate in the decision making process regarding the deployment of military troops abroad. The second part of the chapter describes the involvement of the European Parliament in the Common Foreign and Security Policy. It deals in particular with the budgetary power of the European Parliament and how it gets and handles relevant classified information.

Chapter IV analyzes four challenges which the European Union will face regarding an effective civilian control of armed forces. These challenges are the weak involvement of the national parliaments in the area of Common Foreign and Security Policy, the restricted access to classified information for both the national parliaments and the European Parliament, the restricted right of oversight and scrutiny of the European Parliament, and the problem of the different security status of each of the Member States of the European Union.

The Conclusion summarizes the findings of the thesis and presents proposals on how to heal some of the deficiencies in the area of civilian control of armed forces.

II. THEORETICAL FRAMEWORK

A. DEFINITION OF CIVILIAN CONTROL

In general, civilian control of armed forces means the subordination of the military to democratically elected political authorities. “It means that all decisions concerning the defense of the country must be taken by those elected to take charge of the country’s affairs.”² For democracies, as the U.S. scholar Richard Kohn mentioned, civilian control is fundamental. “Civilian control allows a nation to base its values and purposes, its institutions and practices, on the popular will rather than on the choices of military leaders, whose outlook, by definition, focuses on the need for internal order and external security.”³ In this thesis, the EU context of civilian control means accountability of the Commission and the Council to the European Parliament, as the only directly elected institution of the European Union.

Perhaps the best known scholar in the area of civilian control of armed forces is Samuel Huntington. In his book, *The Soldier and the State – The Theory and Politics of Civil-Military Relations*, published in 1957, he described two different kinds of civilian control, namely subjective and objective civilian control. Subjective civilian control is defined as the maximization of civilian power of some particular civilian groups⁴, foremost particular governmental institutions. According to Huntington, “the essence of subjective civilian control is the denial of an independent military sphere.”⁵ It leads, consequently, to the involvement of the military in institutional, class, and constitutional politics or, in other words, in military participation in politics. Huntington rejected subjective civilian control because he thought that it tends to corrupt the professional quality of the armed forces. Instead he preferred the other form of civilian

² Rose, Charlie: Democratic Control of the Armed Forces. A parliamentary role in Partnership for Peace. *NATO Review Web Edition*, pp.13-19, No. 5 Oct 1994 Vol. 42 Internet Website <http://www.nato.int/docu/review/1994/9405-4.htm> from 31 May 2003. See also Cottey, Andrew, Edmunds, Timothy, and Forster, Anthony (ed.): *Democratic Control of the Military in Postcommunist Europe*, Palgrave Publishers Ltd., Houndmills, Basingstoke, Hampshire 2002

³ Kohn, Richard H.: The Forgotten Fundamentals of Civilian Control of the Military in Democratic Governments. *John M. Olin Institute for Strategic Studies*, Harvard University, Internet Website under construction

⁴ Huntington, Samuel P.: *The Soldier and the State – The Theory and Politics of Civil-Military Relations*, p. 80, The Belknap Press of Harvard University Press. 1957 renewed 1985

⁵ *ibid*, p. 83

control, objective civilian control. Defined as “the maximizing of military professionalism”⁶, the final consequence of objective civilian control is establishing the military as a tool of the state by militarizing the military. In Huntington’s view “the achievement of objective civilian control has only been possible [...] since the emergence of the military profession.”⁷ The conditions needed to maximize military professionalism and objective civilian control are the power of civilian groups within society relative to the officer corps and the compatibility of the professional military ethic with the political ideologies prevailing in society. The relationship between political leaders and the officer corps is characterized in that the former will give the orders and “a highly professional officer corps stands ready to carry out the wishes of any civilian group which secures legitimate authority within the state.”⁸ This means that the military officer is an autonomous professional and “an officer corps focused on its own profession – and granted sufficient independence to organize itself and practice the art of war without interference in those areas which required technical expertise – would be politically neutral and less likely to intervene in politics.”⁹ Like Huntington, Morris Janowitz, another scholar in the area of civilian control of armed forces, in his book, *The Professional Soldier – A Social and Political Portrait*, published in 1964, dealt with the officer corps and the concept of professionalism¹⁰. In contrast to Huntington however, Janowitz’s professionalism is not of “traditional nature” but a result of “pragmatic doctrine”.¹¹ This means, that Janowitz believes that although the military does not participate directly in politics, it is strongly linked to the political system and the state.

⁶ *ibid*, p. 83

⁷ *ibid*, p. 85

⁸ *ibid*, p. 84

⁹ Kohn, Richard H., p. 4

¹⁰ Janowitz, Morris: *The Professional Soldier – A Social and Political Portrait*. First Free Press Paperback Edition 1964

¹¹ *ibid*, p. 418

Some authors have questioned the validity of the claim that objective civilian control is the only proper way of democratically controlling the armed force.¹² First of all, they argue that “the paradox of Huntington’s formulation is that the greater a military’s autonomy, the less control civilians actually exercise.”¹³ Furthermore, they disagree because “some countries do successfully practice a type of democratic control that is very close to subjective civilian control.”¹⁴ An example for this is Switzerland, “where people traditionally have an aversion to centralized state power and a ‘deeply rooted mistrust of military professionalism’.”¹⁵

Another argument against Huntington is that he developed his model during the height of the Cold War. Hew Strachan, in his book, *The Politics of the British Army*, argued that Huntington was “concerned with America’s problems in adapting to the maintenance of a large military establishment in peacetime, and with the attendant difficulties of social and political integration.”¹⁶ In opposition to Huntington, Strachan referred to Amos Perlmutter, who identified three types of military organization in the modern nation-state and noticed that “what varies [...] is the political order, and it is this which shapes the character of the soldier. The soldier himself is in a job which is inherently political [...] [which means] ‘the military cannot take a neutral political stance’.”¹⁷ He states that “the most obvious manifestation of the fact that the army must be politicized [is] because [...] ‘it is in the service of the state and the authorities’”¹⁸ and adds “what limits the impact of their intervention is not that the army is inherently political – because it is not – but the political culture within which the army is operating.”¹⁹

¹² See for example Born, Hans / Caparini, Marina / Haltiner, Karl: Models of democratic control of the armed forces – A multi-country study comparing ‘good practices’ of democratic control. *Geneva Centre for the democratic control of armed forces (DCAF) Working Paper Series – No. 47*. Internet Website http://www.dcaf.ch/publications/Working_Papers/47.pdf from 31 May 2003. Kohn, Richard H.: The Forgotten Fundamental of Civilian Control of the Military in Democratic Government. Strachan, Hew: *The Politics of the British Army*, Clarendon Press, Oxford, New York 1997

¹³ Kohn, Richard H., p. 4

¹⁴ Born, Hans: p. 5

¹⁵ Born, Hans: p. 5

¹⁶ Strachan, Hew: p. 11

¹⁷ *ibid*, p. 17

¹⁸ Strachan, Hew: p. 19

¹⁹ *ibid*, p. 19

This point corresponds with that of Morris Janowitz, who predicted that armed forces would transform into constabulary forces. He states: ²⁰

The use of force in international relations has been so altered that it seems appropriate to speak of constabulary forces rather than of military forces [...] The military establishment becomes a constabulary force when it is continuously prepared to act, committed to the minimum use of force, and seeks viable international relations, rather than victory, because it has incorporated a protective military posture.

This means that this kind of armed forces is more likely used by the politicians to establish peace in international or intranational disputes. Nevertheless, Janowitz emphasizes that the field of operations should be international, not domestic, when he points out, “extensive involvement of the military as an internal police force – except as the reserve instrument of ultimate legitimate force – would hinder the development of the constabulary concept in international relations.”²¹ He ends his book with the claim that “political control of the military profession hinges on the answer to the question why do officers fight.”²² His answer on this point is their professional ethic. In contrast to Huntington, Janowitz claims a close convergence between civilian and military values: ²³

The constabulary officer performs his duties, which includes fighting, because he is a professional with a sense of self-esteem and moral worth. Civilian society permits him to maintain his code of honor and encourages him to develop his professional skill. He is amenable to civilian political control because he recognizes that civilians appreciate and understand the tasks and responsibilities of the constabulary forces. He is integrated into civilian society because he shares its common values.

Some critics of Janowitz question the difference between his professional ethics and Huntington’s military professionalism. As Peter Feaver states, “in fact, then, the primary control mechanism for Janowitz is the same value-based one that Huntington relied on: professionalism, albeit differently constituted.”²⁴ Janowitz’s prediction that armed forces would transform into constabulary forces was opposed by Eliot Cohen. He stated in his book, *Supreme Command*, that “those who predicted a mere constabulary

²⁰ Janowitz, Morris: p. 418

²¹ *ibid*, p. 420

²² *ibid*, p. 440

²³ *ibid*, p. 420

²⁴ Feaver, Peter D.: The Civil-Military Problematique: Huntington, Janowitz, and the Question of Civilian Control. *Armed Forces & Society*, Volume 23 Number 2. pp. 149-178, Winter 1996

role for the military, hence its transmutation into a kind of heavily armed police force, have been proven wrong. Two real wars – Vietnam and the Persian Gulf – have been fought between the time those predictions appeared and the present day.”²⁵

A third scholar of civilian control of armed forces is Charles Moskos. He sought to combine the two theories of Huntington and Janowitz. “In trying to assess the relationship of the armed forces and the society to American society then, it is useful to conceive of a continuum ranging from a military organization highly differentiated from civilian society to a military system that is highly convergent with civilian structures.”²⁶ His examples are the Armed Services of the United States, whose organizational characteristics tend toward convergence with civilian structures, which he describes as “most apparent in the Air Force, somewhat less so in the Navy, and least of all in the Army and especially the Marine Corps.”²⁷

B. INTERCHANGEABILITY OF “CIVILIAN CONTROL” AND “DEMOCRATIC CONTROL” ON THE EUROPEAN UNION LEVEL

As mentioned, in the context of this thesis, civilian control means accountability of the Commission and the Council to the European Parliament. It includes certain elements of civilian control, which are discussed below, as well as parliamentary oversight and scrutiny. In this respect, some authors make a distinction between democratic control and civilian control. As an example, Wim Eekelen states that “the point is that civilian leadership is not necessarily democratic.”²⁸ This means that democracy is a prerequisite for democratic but not for civilian control. The Member States of the European Union must be established democracies, as the Treaty on European Union states that it “is founded on the principles of liberty, *democracy*, respect of human rights and fundamental freedoms, and the rule of law, principles, which are

²⁵ Cohen, Eliot A.: *Supreme Command – Soldiers, Statesmen, and Leadership in Wartime*, p. 240, The Free Press, Simon & Schuster Inc., New York 2002

²⁶ Moskos, Charles C. Jr.: *Armed Forces and American Society: Convergence or Divergence?* In: Moskos, Charles C. Jr.: *Public Opinion and the Military Establishment* pp. 271-294, Sage Publications Inc., Beverly Hills, California 1971

²⁷ *ibid*, p. 272

²⁸ Eekelen, Wim: *Democratic Control of Armed Forces – The national and international parliamentary dimension. Geneva Centre for the Democratic Control of Armed Forces (DCAF)*, Occasional Paper No.2, Internet Website http://www.dcaf.ch/publications/Occasional_Papers/2.pdf from 31 May 2003

common to the Member States.”²⁹ The Treaty of Nice amended Article 7, and introduced a procedure on how to deal with a serious and persistent breach of these principles by a member state. As a result, the member state concerned can be suspended from certain rights deriving from the application of the treaty.³⁰ By definition then, a national government must be democratic to participate in EU political decisions. In the same manner, the draft of the first sixteen paragraphs of a Constitution for the European Union also addresses, in Article 2, the Principles of the Union, which are “human dignity, liberty, *democracy*, the rule of law and respect for human rights.”³¹ The Copenhagen Criteria, discussed below, which are prerequisites to join the European Union, also reinforce this requirement.

Therefore, to be or to become a member of the European Union requires that the state concerned be an established democracy. This fact explains why, on the European Union level, the terms “civilian control” and “democratic control” can be used interchangeably.

C. THE POLITICAL SYSTEM OF THE EUROPEAN UNION

1. Institutions

Explaining civilian control at the European Union level requires some familiarity with the institutions, committees, and staffs, which are responsible for implementation of the Common Foreign and Security Policy (CFSP). The institutions involved in CFSP at the European level are the Council of the EU, the Commission, and the European Parliament. Regarding Article 46 of the current Treaty of Nice, the Court of Justice is excluded from the CFSP.

Despite the circumstance that the main actors of the CFSP are the Member States of the European Union, the most important actor at the European Union level is the European Council. It brings together the Heads of State or Government of the Member

²⁹ Article 6 (1) Treaty on European Union (TEU) Internet Website Consolidated Versions of the Treaty on European Union and of the Treaty establishing the European Community (2002). Internet Website http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/c_325/c_32520021224en00010184.pdf from 31 May 2003 (italics from the author)

³⁰ See Article 7 (3) TEU

³¹ Article 2 Draft Articles 1 to 16 of the Constitutional Treaty Internet Website <http://european-convention.eu.int/docs/Treaty/CV00528.EN03.pdf> from 31 May 2003 (italics from the author)

States of the EU and the President of the Commission. They are assisted by the Ministers of Foreign Affairs of the Member States and by a member of the Commission. Regarding Article 4 of the TEU “the European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.” Furthermore, with respect to the CFSP, the European Council “shall define the principles of and the guidelines for the common foreign and security policy, including for matters with defense implications.”³² It does this by defining, by consensus, common strategies in areas where the Member States have important interests in common. Such common strategies set out the objectives, duration, and the means to be made available by the Union and the Member States.³³

The Council of the European Union makes the necessary decisions defining and implementing the Common Foreign and Security Policy, on the basis of the general guidelines defined by the European Council.³⁴ In the case of the CFSP, the representatives of the Council are the Ministers of Foreign Affairs of the Member States of the EU. The Council is also responsible for recommending common strategies to the European Council and implementing them, in particular by adopting joint actions and common positions. A joint action addresses specific situations where operational action by the EU is deemed to be required. It lays down its objectives, scope, the means to be made available to the Union, its necessary duration, and the conditions for its implementation.³⁵ An example for such a joint action is the takeover of the military operation in the Former Yugoslav Republic of Macedonia.

The Commission is indirectly involved in the CFSP, as it “shall be fully associated in the tasks referred to in paragraphs 1 and 2.”³⁶ As mentioned, the President of the Commission joins the Heads of State or Government within the European Council. The Commission participates in meetings of the Council and its preparatory bodies and in

³² Article 13 (1) TEU

³³ See Article 13 (2) TEU

³⁴ See Article 13 (3) TEU

³⁵ See Article 14 (1) TEU

³⁶ Article 18 (3) TEU. The paragraphs 1 and 2 refer to the presidency, which shall represent the Union in matters coming within the CFSP (Paragraph 1) and shall be responsible for the implementation of decision taken under this title (Paragraph 2)

the political dialogue with third countries. Additionally, regarding Article 14 (4), “the Council may request the Commission to submit to it any appropriate proposal relating to the Common Foreign and Security Policy to ensure the implementation of joint actions.”

2. Committees and Staff

With the conclusions of the European Council in Nice in December 2000 and the decisions of the Council on 22 January 2001, the Union established the Political and Security Committee (PSC), the European Union Military Committee (EUMC), and the European Union Military Staff (EUMS) on a permanent basis.³⁷ These committees and the EUMS were created in order to allow the EU to assume its responsibilities and fully play its role on the international stage.³⁸

The PSC is made up of officials of ambassadorial rank from each member state of the EU. Its tasks are: ³⁹

- To keep track of the international situation in the areas falling within the common foreign and security policy, help to define policies by drawing up “opinions” for the Council, either at the request of the Council or on its own initiative, and to monitor implementation of agreed policies;
- To examine the areas of General Affairs Council draft conclusions in which it is involved;
- To provide guidelines for other Committees on matters falling within CFSP;
- To maintain a privileged link with the Secretary-General/High Representative and the special representatives;
- To send guidelines to the Military Committee and receive the opinions and recommendations of the Military Committee. The Chairman of the Military Committee, who liaises with the European Union Military Staff, takes part, where necessary, in PSC meetings;

³⁷ With these decisions, a Civilian Crisis Management Committee was also created. This thesis only deals with civilian control of armed forces; the non-military aspects of crisis management are excluded from this paper

³⁸ See Draft Presidency Report on the European Security and Defense Policy for the European Council in Nice Point II: Establishment of permanent political and military structures, Internet Website <http://register.consilium.eu.int/pdf/en/00/st14/14056-r3en0.pdf> from 31 May 2003

³⁹ *ibid*, Annex III

- To receive information, recommendations and opinions from the Committee for Civilian Aspects of Crisis Management and send it guidelines on matters falling within the CFSP;
- To coordinate, supervise, and monitor discussion on CFSP issues in various Working Parties, to which it may send guidelines and whose reports it must examine;
- To lead the political dialogue in its own capacity and in the forms laid down in the Treaty;
- To provide a privileged forum for dialogue on the European Security and Defense Policy with the fifteen and the six⁴⁰ as well as with NATO in accordance with arrangements set out in the relevant documents;
- To take responsibility, under the auspices of the Council, for the political direction of the development of military capabilities, taking into account the type of crisis to which the Union wishes to respond. As part of the development of military capabilities, the PSC will receive the opinion of the Military Committee assisted by the European Military Staff.

The PSC exercises political control and strategic direction of the EU's military response to a crisis. To enable the PSC to do this, the following arrangements were put in place at the European Council in Nice: ⁴¹

- With a view to launching an operation, the PSC sends the Council a recommendation based on the opinions of the Military Committee in accordance with the usual Council preparation procedures. On that basis the Council decides to launch the operation within the framework of a joint action;
- In accordance with Articles 18 and 26 of the TEU, the joint action will determine, in particular, the role of the Secretary-General/High Representative in the implementation of the measures falling within the "political control and strategic direction" exercised by the PSC. For such measures the Secretary-General/High Representative acts with the PSC's assent. Should a new Council decision be deemed appropriate, the simplified written procedure could be used (Article 12 (4) of the Council's Rules of Procedure);

⁴⁰ The "fifteen" are the European NATO non EU member states as well as the candidate countries for the accessions to the EU: Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Island, Latvia, Lithuania, Malta, Norway, Poland, Romania, Slovenia, Slovakia, and Turkey, the "six" encompass the European NATO non EU member states: Czech Republic, Hungary, Island, Norway, Poland, Turkey

⁴¹ See Draft Presidency Report on the European Security and Defense Policy for the European Council in Nice Annex III

- During the operation, the Council will be kept informed through PSC reports presented by the Secretary-General/High Representative in his capacity as Chairman of the PSC.

In the event of a crisis, the chair of the PSC will be handed over to the High Representative.⁴²

The EUMC is composed of the Member States' Chiefs of Defense, represented by their military representatives. Its mission is to provide the PSC with military advice and recommendations on all military matters within the EU. These recommendations are based upon the evaluation of the European Union Military Staff and include advice on the Concept of Operations and a Draft Operations Plan drawn up by the Operation Commander. It also exercises military direction to all military activities within the EU framework.⁴³

The EUMS, which is part of the General Secretariat of the Council, is composed of military personnel from the Member States. Its mission is to perform early warning, situation assessment, and strategic planning for Petersberg Tasks (defined below). It is the source of the EU's military expertise under the direction of the EUMC. During a crisis management operation it continuously monitors all the military aspects of operations and conducts strategic analysis in liaison with the designated operation commander to support the EUMC in its advisory role to the PSC in charge of the strategic direction.⁴⁴

D. COMPARISON OF THE THEORETICAL FRAMEWORK OF CIVILIAN CONTROL WITH THE POLITICAL SYSTEM OF THE EUROPEAN UNION

These different theoretical concepts analyzed in Chapter II.A. pose questions for the European Union. As Richard Kohn mentioned, civilian control is a process and not a fact. Therefore these concepts correspond in different ways to the military forces established by the European Union. The ideas of civil-military scholars pose challenges

⁴² *ibid*, see Annex III

⁴³ *ibid*, see Annex IV

⁴⁴ *ibid*, see Annex V

to the development of future European military forces. Five significant examples of the implications of these theoretical concepts merit examination.

First of all, Morris Janowitz in the early 1960s predicted a change in the armed forces toward constabulary forces, a prediction that seemed prescient in the 1990s. In the case of the European Union, the military forces, established in 1999 at the European Council Summit in Helsinki, have to conduct the so-called Petersberg tasks as their primary mission. These tasks, amended to the Treaty on European Union in Amsterdam in 1997, include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat force in crisis management, including peacemaking. At present there is a discussion in the European Union to amend it further to include the fight against terrorism,⁴⁵ but nevertheless, the development of these military forces will, in the foreseeable future, not lead to a European army. Instead, the draft of the EU Constitution talks about “structured cooperation” between those Member States “which fulfill higher criteria for military capabilities and which have made more binding commitments to one another in this area with a view to more demanding tasks”.⁴⁶ The “Mini Defense Summit” of Belgium, France, Germany, and Luxemburg on 29 April 2003, can be seen, in some respects, as such a cooperation. Additionally, a closer cooperation will be established within the Union framework, as regards to mutual defense.⁴⁷

Second, there is a clear distinction, as Huntington proposed, between military and political leaders. Within the institutional framework of the European Union, the PSC, which is made up of officials of ambassadorial rank, sends guidelines to the EUMC, the Member States’ Chiefs of Defense.

Third, it must be mentioned that some military leaders are highly political. For example, the Chairman of the Military Committee, General Gustav Hägglund, publicly

⁴⁵ The new Article 17 of the Convention’s proposal “Draft Articles on external action in the Constitutional Treaty” includes additionally “support action in combating terrorism at the request of a third country, and post-conflict stabilization.” Available at Internet Website <http://register.consilium.eu.int/pdf/en/03/cv00/cv00685en03.pdf> from 31 May 2003

⁴⁶ *ibid* Article 30 (6)

⁴⁷ See Article 30 (7)

stated at the end of February 2003 that “in my opinion, it is time for the European Union to focus also on the protection of its own citizens and to create something comparable to the homeland defense in Northern America.”⁴⁸ With this statement, the chairman of the highest military body of the European Union is, in some respects, able to lead the political and public discussion in a certain direction. Such an action agrees with Hew Strachan’s and Amos Perlmutter’s argument on the inherently political job of a soldier.

Fourth, the EU maintains a distinction between military forces and police, as Morris Janowitz emphasized. For both forces, different “Headline Goals” were developed, with a clear delineation of responsibilities. In addition, this division is also apparent in the different committees created to deal with military and non-military issues of crisis management. The primary tasks for the military forces remain, with respect to the Petersberg Tasks, international.

Fifth, the EU military forces are professional forces in the sense of the definition of Janowitz. He defined a professional soldier “as a person who has made the military establishment the locus of his career.”⁴⁹ Even though conscription has not totally disappeared in Europe, up to now no conscripts are part of the troops to be deployed for an EU-led crisis management mission.

E. POSSIBLE FORMS OF CIVILIAN CONTROL AND THEIR ELEMENTS

The subordination of the military to democratically elected political authorities, inherent to civilian control, can take many forms. According to Richard H. Kohn⁵⁰, it is based on four foundations. The first foundation is democratic governance, which means the openness of the institutions, participation, accountability, effectiveness, and coherence.⁵¹ Second are the methods by which civilian authority rules military forces. In essence, this means that the executive, legislative and judiciary branches of the government should be divided. Parliamentary accountability is important in this respect.

⁴⁸ See Euobserver statement at 28 February 2003 Internet Website <http://www.euobserver.com/index.phtml?sid=13&aid=9536> from 31 May 2003

⁴⁹ Janowitz, Morris, p. 54

⁵⁰ Kohn, Richard H., p. 6-8

⁵¹ See European Governance: A White Paper, published by the European Commission 25 July 2001, Internet Website http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf from 31 May 2003, p. 10

As Kohn states “Accountability to parliament or to the legislature implies accountability to the populace [...] actively exercised, parliamentary power over the military contributes to a transparency in military affairs [...]”⁵² A third foundation for civilian control is countervailing power. This means first and foremost that in the military, illegal acts will not be tolerated. “The more likely that violations of civilian control will not be forgiven and will be met by effective resistance, the less likely they are to occur.”⁵³ Finally, the last foundation for civilian control is the support for it by the military itself. Kohn defines this point by saying that “the fundamental assumption behind civilian supremacy is the abstinence by the military from intervention in government and political life.”⁵⁴

Within the framework of the EU, these foundations are reflected as follows:

- The political system of the European Union is based on democratic governance. The Treaty on European Union expresses this core element (Article 6) and additionally some specific criteria must also be fulfilled to join the union. In June 1993 at the European Council in Copenhagen, the Heads of State and Government determined certain criteria for EU admission, which must be achieved by each applicant prior to entry. Membership to the European Union requires that the candidate country fulfill three goals:⁵⁵
 1. Political: stable institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities;
 2. Economic: a functioning market economy;
 3. Incorporation of the Community *acquis*: adherence to the various political, economic and monetary aims of the European Union.
- The executive of the European political system is the Commission, which defines the principles of and guidelines for the Common Foreign and Security Policy. Nevertheless, despite these tasks, the Commission is only indirectly involved in the CFSP, as it “shall be fully associated in the tasks referred to in

⁵² *ibid*, p. 7

⁵³ *ibid*, p. 7

⁵⁴ *ibid*, p. 8

⁵⁵ Copenhagen Criteria. See Internet Website <http://europa.eu.int/scadplus/leg/en/cig/g4000a.htm> from 31 May 2003

paragraphs 1 and 2.”⁵⁶ The legislative branch of the Common Foreign and Security Policy relies on the responsibility of the Member States of the EU since the second pillar is inter-governmentally organized. The main point of critique is that the European Parliament is not involved in the decision-making process of the deployment of military troops for EU-led crisis management operations. Regarding Article 21 of the Treaty on European Union, the European Parliament must only be informed by the Presidency and the Council of the EU. The judiciary at the EU level is not involved in the CFSP, which is a second point of critique. Regarding Article 46 of the current TEU of Nice, the Court of Justice is excluded from the CFSP. However, the demand for a division of executive, legislative and judiciary branches is fulfilled at the national level by each member state,

- With respect to countervailing power, troops are normally deployed under the jurisdiction of the national legal system, which guarantees the rule of law and that illegal acts will not be tolerated. As mentioned, the Court of Justice of the European Union is excluded from the legal scrutiny of the CFSP. As a result, this founding principle remains fulfilled at the national level.

Civilian control of armed forces is not limited only to these four foundations. It also requires a number of specific elements to be effective. Those elements can be summarized as:⁵⁷

- A clear legal and constitutional framework, defining the basic relationship between the state and armed forces;

⁵⁶ Article 18 (3) TEU

⁵⁷ See Carnovale, Marco: NATO partner and allies – Civil-military relations and democratic control of the armed forces. *NATO Review Web Edition*, pp. 32-35 No. 2 Mar 1997 Vol. 45 Internet Website <http://www.nato.int/docu/review/1997/9702-9.htm> from 31 May 2003. Cottey, Andrew, Edmunds, Timothy, and Forster, Anthony (ed.): *Democratic Control of the Military in Postcommunist Europe*. Joð, Rudolf: The democratic control of armed forces – The experience of Hungary. European Union Institute for Security Studies. *Chaillot Paper* No 23. Internet Website <http://www.iss-eu.org/chaillot/chaill23e.html> from 31 May 2003. Kohn, Richard H.: The Forgotten Fundamentals of Civilian Control of the Military in Democratic Government. Rose Roth Seminar Odessa September 1998 – Democratic Control of the Armed Forces. Internet Website <http://www.naa.be/archivedpub/special/ar243gen9860-odessa.asp> from 31 May 2003

- A significant role of parliament in legislating defense and security matters which influence the formulation of national strategy, in contributing transparency to decisions concerning defense and security policy;
- A clear chain of command for the armed forces, with democratically elected civilian leaders at its head;
- The hierarchical responsibility of the military to the government of the day through a civilian Minister of Defense – a Ministry or Department of Defense – that is charged, as general rule, with the direction / supervision of its activities;
- Qualified civilians to work with the military in the elaboration of defense requirements and the agreement of defense policy and budget;
- The clear division of professional responsibility between civilian and military spheres in such a way that political authority and accountability on the one hand, and military professionalism and expertise on the other, are optimized;
- The subordination of the military General Staff to the civilian Ministry of Defense;
- The presence of a well trained and experienced professional military corps that is respected and funded by a civilian authority;
- A degree of transparency with regard to the defense budget;
- The effective oversight and scrutiny of parliament.

These elements of civilian control of armed forces reinforce the primacy of the nation state and its national institutions. It is a matter of fact that nation states are reluctant to hand over civilian control of armed forces to a supranational organization. Most importantly, the accountability for the decision to pursue war or peace is one of the core elements of national sovereignty. The only attempt in recent European history to create a supranational European Army was in the framework of the European Defense Community in the 1950s. This attempt was rejected by the French National Assembly in 1954.

The European Union has developed its own institutions, which are in some respect comparable with national institutions. Richard Kohn has stated that civilian control is based on values and purposes of a nation and on the popular will rather than on

the choices of military leaders.⁵⁸ At the EU level, the European Parliament represents the peoples of the European Union. It is the only institution that is directly elected and should, therefore, be the institution at the EU level which is in charge of civilian control of armed forces. The Council of the European Union, which consists of a representative of each member state of the Union at ministerial level, represents the Member States' governments. The Commission is indirectly involved in the CFSP as it only has the right to be informed by the Council. Therefore, the principles for civilian control of armed forces at the EU level are similar and comparable to that of the nation states:

- The convention has submitted draft texts of the Articles of the Treaty establishing a Constitution for Europe⁵⁹. Article 29 and 30 of this constitution deal with the Common Foreign and Security Policy and the Common Defense Policy respectively;
- The newly established Political and Security Committee (PSC), the European Union Military Committee (EUMC), and the European Union Military Staff (EUMS) have a clear hierarchical order with the subordination of the EUMS under the political control of the PSC, especially during a crisis management operation;
- The EUMS, part of the General Secretariat of the Council, is under the direction of the Military Committee;
- The commitment of the Member States of the European Union in November 2001 to earmark troops for the "Headline Goals" can be seen as a political assurance that only well trained and experienced professional military forces will be deployed. Despite the circumstance that these commitments are voluntarily, it is a matter of fact that Member States which are asked for troops cannot always easily refuse this request. Since the development of the EU's military role in international affairs, the Member States of the European Union will only send such troops that are able to conduct and fulfill the missions. The

⁵⁸ See Chapter Definition of Civilian Control in this paper

⁵⁹ "Draft Articles of Articles 1 to 16 of the Constitutional Treaty" and "Draft of Articles 24 to 33 of the Constitutional Treaty" Internet Website <http://european-convention.eu.int/docs/Treaty/CV00571.EN03.pdf> from 31 May 2003

deployed troops, therefore, will represent an object of both national and EU prestige, that cannot be easily passed by;

- The annual budget is open to the public, the EP has the right to discharge the Commission, and the Court of Auditors submits an annual special report on the management of the CFSP;
- The European Parliament has some rights of oversight and scrutiny, especially with respect to the financing of crisis management operations. For that reason, the European Parliament has created three standing committees to deal with all aspects of the CFSP. The Committee on Foreign Affairs, Humans Rights, Common Security and Defense Policy is responsible for matters relating to the common foreign and security policy of the European Union, including the task of formulation of a common defense and disarmament policy. The tasks of the Committee on Budgets and the Committee on Budgetary Control include the definition and the exercise of Parliament's budgetary powers and establishing the rules of the EU's budget. Furthermore, the Committee on Budgetary Control is responsible for the control of financial, budgetary and administrative implementing measures relating to the general budget of the European Union.⁶⁰

F. SUMMARY

The different theoretical frameworks have shown that there is no single concept of civilian control. Samuel Huntington divided his theory between subjective and objective civilian control and preferred the latter as the maximization of military professionalism. Morris Janowitz's theory of civilian control predicted that armed forces would transform into constabulary forces, which have to operate on an international level. Charles Moskos sought to link these two concepts and argued that some services of the military forces have converged more closely with the political leadership while other services have only

⁶⁰ See Annex VI of the Rules of Procedures of the European Parliament – The Powers and Responsibilities of Standing Committees. Available at Internet Website <http://www2.europarl.eu.int/omk/sipade2?PROG=RULES-EP&L=EN&REF=TOC> from 31 May 2003

a weak relationship. This paper has shown that at the EU level “civilian control” and “democratic control” are interchangeable. The reasons are the details in the Treaty on EU itself and the necessity for states which apply for EU membership to be democracies. With the development of the Common Foreign and Security Policy, the EU also implemented Committees and a Military Staff, which are responsible for its execution. A comparison showed how the different theoretical frameworks of civilian control match with the political system of the EU. It demonstrated that the concept of civilian control, which was developed for nation states, can apply to the political system of the European Union. The main aspect regarding civilian control is the responsibility of the institutions, which are in charge for the implementation of the CFSP to the respective parliaments. Since the European Union is a unique organization, these responsibilities are divided between the Member States and the EU itself.

III. THE PARLIAMENTARY DIMENSION OF CIVILIAN CONTROL

The second pillar of the European Union, the CFSP, is inter-governmentally organized. This means that nation states mutually adjust their government policies through a process of policy coordination. The main decision makers regarding the Common Foreign and Security Policy therefore remain the Member States of the European Union. The Headline Goal, which mandates that the EU create its own crisis management capacity, does not imply the creation of a standing European army. The Member States have to decide whether and how many troops for a crisis management mission they will provide. To be democratically legitimized, this decision-making process should involve the national parliaments of the Member States. Each member state has its own approach to this issue, which makes it necessary to look at the different institutions involved in the decision-making process at the national level. Additionally, the role of the national parliaments regarding the decision-making process at the EU level is based on a declaration annexed to the Maastricht Treaty and a protocol annexed to the Amsterdam Treaty. The Declaration No 13 of the Maastricht Treaty reads as follows:⁶¹

The Conference considers that it is important to encourage greater involvement of national Parliaments in the activities of the European Union. To this end, the exchange of information between the national Parliaments and the European Parliament should be stepped up. In this context, the governments of the Member States will ensure, inter alia, that national Parliaments receive Commission proposals for legislation in good time for information or possible examination.

Similarly, the Conference considers that it is important for contacts between the national Parliaments and the European Parliament to be stepped up, in particular through the granting of appropriate reciprocal facilities and regular meetings between members of Parliament interested in the same issues.

In 1999, after the Treaty of Amsterdam entered into force, this declaration was amended by a “Protocol on the role of national Parliaments in the European Union”. In addition to the availability of legislative proposals as defined above, this protocol added

⁶¹ See Declaration No 13 on the role of national Parliaments in the European Union. Internet Website http://www.uni-mannheim.de/edz/doku/vertrag/engl/m_final.htm from 31 May 2003

that:⁶²

1. All Commission consultation documents (green and white papers and communications) shall be promptly forwarded to national parliaments of the Member States;

3. A six-week period shall elapse between a legislative proposal or a proposal for a measure to be adopted under Title VI of the Treaty of the European Union being made available in all languages to the European Parliament and the Council by the Commission and the date when it is placed on a Council agenda for decision either for the adoption of an act or for adoption of a common position pursuant to Article 189b or 189c of the Treaty establishing the European Community, subject to exceptions on grounds of urgency, the reasons for which shall be states in the act or common position.

The following sections will first examine and compare⁶³ those ten EU Member States, which have international commitments regarding their NATO membership, then the four Member States, which have a neutral or non-aligned status in their international relations, and finally review the specific case of Denmark, which despite its NATO membership, decided to opt-out in CFSP within the EU framework. The second part of the chapter will deal with the tasks of the European Union regarding civilian control of armed forces.

A. THE ROLE OF THE NATIONAL PARLIAMENTS IN THE EUROPEAN UNION

In **Belgium**, the constitution stipulates that, "The king manages international relations [...] commands the armed forces, and determines the state of war and the cessation of hostilities."⁶⁴ Since national defense is a matter for the executive, parliamentary scrutiny is exercised retrospectively by the two chambers, the House of Representatives and the Senate. The final decision is taken by the House of

⁶² See Protocol on the role of national parliaments in the European Union Point I: Information for national parliaments of member states. Internet Website http://europa.eu.int/eur-lex/en/treaties/dat/ams_treaty_en.pdf from 31 May 2003

⁶³ For greater detail to this comparison, see Assembly of Western European Union Document C/1762 *National parliamentary scrutiny of intervention abroad by armed forces engaged in international missions: the current position of law* Internet Website http://www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2001/1762.pdf from 31 May 2003

⁶⁴ See Article 167 of the Constitution of Belgium. Internet Website http://www.oefre.unibe.ch/law/icl/be00000_.html from 31 May 2003

Representatives alone. For deployment of Belgian troops abroad, no authorization of the parliament is required.

The constitution of **France**, from 28 September 1958, sees the president as the “guarantor of the national independence, the integrity of the territory, and of observance of Community agreement.”⁶⁵ He is also Commander-in-Chief of the Armed Forces.⁶⁶ Regarding the decision to deploy military troops to peace keeping operations, the President is the institution of authorization, but only if he can declare this deployment necessary because of a threat to the nation or the state of emergency. If not, then Article 16 of the constitution states:⁶⁷

(1) When the institutions of the Republic, the independence of the nation, the integrity of its territory, or the fulfillment of its international commitments are under grave and immediate threat and when the proper functioning of the constitutional governmental authorities is interrupted, the President of the Republic shall take the measures demanded by these circumstances after official consultation with the Prime Minister, the Presidents of the Assemblies, and the Constitutional Council;

(2) He shall inform the nation of these measures by a message.

Nevertheless, some Members of the Parliament complain that “deployment of French forces abroad occurs in the majority of cases without any form of parliamentary scrutiny being exercised.”⁶⁸

In **Germany**, the parliament has to approve in general a deployment of military forces, in other cases than in a state of defense. In the decision of the Constitutional Court from 12 July 1994, the court expressed that a decision for a mission outside the country is made under a constitutive reservation of the parliament (*konstitutiver Parlamentsvorbehalt*).⁶⁹ This means, that in case of a deployment of military personnel

⁶⁵ See Article 5 (2) of the Constitution of France. Internet Website <http://www.oefre.unibe.ch/law/icl/fr00000.html> from 31 May 2003

⁶⁶ See Article 15 of the Constitution of France

⁶⁷ See Article 16 of the Constitution of France

⁶⁸ So Francois Lamy, quoted in Assembly of the WEU Document C/1762, p. 11

⁶⁹ quoted in Siedschlag, Alexander: *National decision-making processes for military mission within the framework of the Petersberg-Tasks of the EU – Germany, France, United Kingdom, Italy, Sweden* (Nationale Entscheidungsprozess bei Streitkräfteeinsätzen im Rahmen der Petersberg-Aufgaben der EU – Deutschland, Frankreich, Grossbritannien, Italien, Schweden) in: Reiter, Erich / Rummel Reinhardt / Schmidt, Peter (Ed.): *Europe’s remote military forces. EU’s chances and difficulties of the development of the ESDP (Europas ferne Streitmacht. Chancen und Schwierigkeiten der Europaeischen Union beim Aufbau der ESVP)*

abroad, an approval of the House of Representatives (*Bundestag*) is necessary in advance. Furthermore, the House of Representatives has to agree to a prolongation or enhancement of the mission. Additionally, the House of Representatives has no right of initiative, which means it can not force a deployment of military forces against the will of the government. The Defense Committee of the House of Representatives is permitted to consider any defense related matter, including of its own motion, and can turn itself into a committee of inquiry. For the national dimension of civilian control of armed forces, there is a Parliamentary Commissioner (*Wehrbeauftragter des Deutschen Bundestag*) for the armed forces, who is a kind of mediator elected for a five-year term. The legal basis for this institution is the Law of the Parliamentary Commissioner of the House of Representatives (*Gesetz über den Wehrbeauftragten des Deutschen Bundestages*).⁷⁰ Paragraph 1 states the responsibility for parliamentary control. According to Paragraph 2, he or she has to report annually to the House of Representatives. This report is made available to the general public.

In **Greece**, the Council of Ministers has competence of the decision to deploy military troops within the framework of the country's obligations under international agreements.

Regarding **Italy's** constitution, the president is the commander of the armed forces and the chairman of the Supreme Defense Council. Formally, there is no obligation to consult the parliament before the deployment of troops abroad, but the constitution states in Article 11 a "repudiation of war as an instrument of offence against the liberty of other peoples and as a means for settling international disputes."⁷¹ Political practice shows, that the government automatically consults the Chamber of Deputies⁷². On 16 January 2001, Parliament and the Defense Committee approved a resolution describing the decision-making process for the deployment of military contingents abroad as follows:⁷³

⁷⁰ Available at Internet Website <http://bundesrecht.juris.de/bundesrecht/gesetze/BJNR006520957/navigation.html> from 31 May 2003 (in German)

⁷¹ See Article 11 of the Constitution of Italy. Internet Website http://www.oefre.unibe.ch/law/icl/it00000_.html from 31 May 2003

⁷² See Siedschlag Alexander, p. 229

⁷³ quoted in Assembly of WEU Document C/1762, p. 13

[...]

3. The Government deliberates on any involvement in missions abroad and reports immediately to Parliament;
4. Parliament – both chambers or one only, or the relevant parliamentary committees – approves, on the basis of government communications on the unfolding of the crisis and any initiatives taken – the decision taken, within a time limit compatible with the international undertakings given;
5. Once Parliament has taken its stance, the Government may either (a) enact by decree the accompanying financial arrangements for the approved measures or (b) lay down draft legislation with the same content before Parliament;
6. The Minister for Defense carries out the decisions adopted by government by giving instructions to the Joint Chief of Staff.

The Italian government is obliged to submit to both Chambers a decree defining the scope and nature of the Italian contribution to a military mission abroad. The involvement of the parliament encompasses especially the approval of the funding of such a mission.

In **Luxemburg**, each peacekeeping mission requires the drafting of a “Grand Duchy regulation” with compulsory consultation of the Council of State and Conference of Presidents of the Chamber of Deputies. Additionally, the decision to participate in multinational missions abroad is made by the Government meeting in Council, after having consulted with the Foreign Affairs and Defense Committees of the Chamber of the Deputies.

Netherlands’ constitution expresses in Article 100:⁷⁴

The Government shall provide Parliament with information in advance on the posting or making available of the armed forces for the maintenance or promotion of the international legal order, including information on the posting or making available of the armed forces for the provision of humanitarian assistance in the case of armed conflict.

This provision does not automatically constitute a formal right of assent of the Dutch Parliament but “it does mean that Parliament has a substantive right of assent in

⁷⁴ See Assembly of WEU Document C/1762, p. The new Constitution of the year 2000 is available in Dutch at Internet Website http://nl.wikipedia.org/wiki/Nederlandse_Grondwet from 31 May 2003

practice. The Government would never post Dutch military personnel abroad without the assent of a (large) majority in Parliament.”⁷⁵

In **Portugal**, the Assembly of the Republic has, according to Article 163 (j) of the constitution, the power “to monitor, in accordance with the law and Standing Orders, the involvement of Portuguese military contingents abroad.”⁷⁶

In **Spain**, the case of military operations in the framework of an international mission is not explicitly provided for by law but forms part of the foreign policy responsibilities of Government. The Council of Ministers makes the formal decision to authorize the participation of Spanish military units in humanitarian and peacekeeping missions. Such decisions are based on proposals from the Defense and Foreign Affairs Ministries. In regards to the Assembly of the WEU report, the government has always acted on its own initiative, but its decisions are accompanied by a parliamentary debate, almost always after the event, without the adoption of instruments binding on the Government in regard to the measures adopted.

In the **United Kingdom**, deployment of British troops and the issuing of orders to engage in hostilities are regarded as matters of Royal Prerogative, exercised by the monarch and his/her ministers of the Cabinet. This division of responsibility goes back to William III in 1688. In this respect, Hew Strachan notes that this division was accomplished by “vesting the command of the army in military officers responsible to the crown and [...] vesting the administration of the army in civil ministers responsible to the parliament.”⁷⁷ Nowadays this responsibility is executed less by the respective ministers and more by the Prime Minister himself. As a result, the executive dominates the British foreign policy process, more than any other policy area. The British Parliament plays a comparatively minor role in foreign affairs. Norrin N. Ripsman⁷⁸ identifies three considerations which prevent the British Parliament from achieving a major role in foreign policy making. First, since the British system is adversarial in nature, Parliament

⁷⁵ See WEU Assembly Documents C/1762, p. 14

⁷⁶ See Article 163 (j) of the Constitution of Portugal Internet Website http://www.parlamento.pt/ingles/cons_leg/crp_ing/index.html from 31 May 2003

⁷⁷ See Strachan, Hew, p 44

⁷⁸ See Ripsman, Norrin N.: *Domestic Structures and Democratic Foreign Policy. Peacemaking After World War II*. Internet Website <http://www.ciaonet.org/wps/rin01/> from 31 May 2003

is rigidly divided into Government and Opposition. Second, the Cabinet is able to keep vital information confidential. Third, it is prevailing norm that foreign security policy ought to be left to the Cabinet. Therefore, parliamentary control is restricted to funding.⁷⁹ Nevertheless, this control is limited by the fact that the parliament does not decide about single expenditures but about the entire defense budget. In the words of Hew Strachan, “during the course of the last century, and particularly since 1945, the army’s subordination to parliament has become a constitutional figment rather than a practicing reality. The role of the House of Common has been largely passive.”⁸⁰

In **Austria**, according to Article 80 (1) of the constitution, the Federal President is Commander-in-Chief of the Federal Army. The Federal Minister exercises supreme command over the Federal Army.⁸¹ In 1997, the government passed a law regarding the deployment of military personnel abroad.⁸² Article 2 (1) states that the government, in agreement with the Main Committee of the Parliament, is responsible for the deployment of military troops in the case of a measure to promote peace within the framework of an international organization or the OSCE, or in execution of a decision in the framework of the Common Foreign and Security Policy. Parliamentary participation concerning EU matters is laid down in the Austrian Federal Constitution, in Article 23a to 23f. Normally, Austria’s Parliament is informed without delay by the Minister about all projects within the framework of the European Union.⁸³ Its Main Committee and Standing Committee on European Affairs respectively, have the possibility to present opinions to the respective Federal Minister. These opinions are legally, as well as politically, binding⁸⁴ and can be presented on issues falling into all three pillars of EU law. The respective Federal

⁷⁹ See Siedschlag, Alexander, p. 28

⁸⁰ See Strachan Hew, p. 265f

⁸¹ See Article 80 (3) of the Constitution of Austria. Internet Website <http://www.parlament.gv.at/pd/gesetze/b-vg/default.html> from 31 May 2003 (in German)

⁸² Constitutional Law of Cooperation and Solidarity for the Deployment of Units and Personnel abroad (Bundesverfassungsgesetz über Kooperation und Solidarität bei der Entsendung von Einheiten und Einzelpersonen in das Ausland) Internet Website http://www.bmlv.gv.at/download_archiv/pdfs/gesetze/auslandseinsatzrecht.pdf from 31 May 2003

⁸³ See Article 23e (1) of the Constitution of Austria

⁸⁴ See Hegeland, Hans and Neuhold, Christine: Parliamentary participation in EU affairs in Austria, Finland and Sweden: Newcomers with different approaches *European Online Papers* Vol 6 (2002) N° 10. Internet Website <http://eiop.or.at/eiop/pdf/2002-010.pdf> from 31 May 2003

Minister is only allowed to depart from such a binding opinion in the case of “compelling reasons of foreign and integration policy.”⁸⁵

Finland’s involvement in international peacekeeping missions is based on her own law. The “Act on Peace Support Operations 2000”⁸⁶ organizes in Chapter 1 the participation of Finland in military crisis management and peace support operations. According to Section 1, Finland will participate only within the framework of a UN or OSCE mandate. Section 2 of Chapter 1 deals with the decision on participation; it reads:

On the proposal of the Government, the President of the Republic shall decide on Finland’s participation in peacekeeping activities and on the termination of participation, in each case separately. Before introducing the proposal to deploy a peacekeeping force, the Government shall consult the Foreign Affairs Committee of Parliament. Furthermore, the Government shall consult the Foreign Affairs Committee of Parliament if major changes are planned in the tasks of the Finnish forces.

If the rules of engagement of the peacekeeping force are planned to be wider than in traditional peacekeeping, the Government must consult Parliament by submitting a report detailing the rules of engagement in the operation in question prior to introducing the proposal. The procedure shall be the same if a widening of the rules of engagement of the peacekeeping force is planned during the peacekeeping operation.

Ireland’s constitution states, “The supreme command of the Defense Forces is hereby vested in the President.”⁸⁷ The development of the CFSP and the participation of Ireland respectively do not affect the military neutrality of the country.⁸⁸ As Ireland is committed to a “devotion to the ideal of peace and friendly co-operation amongst nations founded on international justice and morality”⁸⁹, each new treaty of the EU or a change in the CFSP affecting Ireland’s neutrality must be approved by a referendum.⁹⁰ This led to a referendum on 19 October 2002 and an amendment of the constitution, which states

⁸⁵ Article 23e (2) of the Constitution of Austria; last sentence

⁸⁶ Available at Internet Website <http://www.finlex.fi/pdf/saadkaan/E9840514.PDF> from 31 May 2003

⁸⁷ See Article 13.4 of the Constitution of Ireland. Internet Website <http://www.taoiseach.gov.ie/upload/publications/297.htm> from 31 May 2003

⁸⁸ See White Paper on Defense February 2000. Internet Website [http://www.defence.ie/website.nsf/0/4C65ACD916F7E50180256C5A0055BCB3/\\$file/whiteppr.pdf](http://www.defence.ie/website.nsf/0/4C65ACD916F7E50180256C5A0055BCB3/$file/whiteppr.pdf) from 31 May 2003, p. 20

⁸⁹ See Article 29 (1) of the Constitution of Ireland which defines thereof the country’s military neutrality

⁹⁰ See Article 47 of the Constitution of Ireland

“the State shall not adopt a decision taken by the European Council to establish a common defence pursuant to Article 1.2 of the Treaty [of Nice][...]”⁹¹

Sweden’s constitution talks about the deployment of military forces in Chapter 10 “Relations with other States” Article 9. It reads:⁹²

(1) The Government may commit the country's defense forces, or any part of them, to battle in order to repel an armed attack upon the Realm. Swedish armed forces may otherwise be committed to battle or sent to another country only if

- 1) The Parliament has assented thereto;
- 2) It is permitted under a law which sets out the prerequisites for such action;
- 3) An obligation to take such action follows from an international agreement or obligation which has been approved by the Parliament;

(2) No declaration of war may be made without the consent of the Parliament, except in the event of an armed attack against Sweden;

(3) The Government may authorize the defense forces to use force in accordance with international law and custom to prevent a violation of Swedish soil in time of peace or during a war between foreign states.

This last point authorizes Swedish armed forces to be deployed under article 43 of the UN Charter.⁹³

In addition, there are two laws authorizing the Government to send armed forces abroad.⁹⁴ The first is the “Act on Armed Forces on Duty Abroad”, which authorizes the government to make armed forces available for peacekeeping activities by request of the United Nations or according to decisions made by the Organization for Security and Cooperation in Europe (OSCE). This force may not exceed 3,000 persons serving abroad

⁹¹ See Article 29 (9) of the Constitution of Ireland

⁹² See the Constitution of Sweden. Internet Website http://www.oefre.unibe.ch/law/icl/sw00000_.html from 31 May 2003

⁹³ Article 43 (1) reads: All members of the United Nations, in order to contribute to the maintenances of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security. Charta of the United Nations available at Internet Website <http://www.un.org/Overview/Charter/contents.html> from 31 May 2003

⁹⁴ quoted from Assembly of Western European Union Document A/1762, p. 19

at the same time. However, this law is only applicable to peacekeeping – not to peace-enforcement activities. The second act is the “Act on Training for Peace-promoting Activities”. This act enables the government to send armed forces abroad to participate in training for peace-promoting activities within the framework of international cooperation.

Denmark is a special case because of the Danish opt-out on defense at EU level. This opting-out of defense within the European Union is based on Protocol No 5 of the Treaty of Amsterdam. The means that Denmark does not participate in the elaboration and implementation of decisions and actions of the Union that have defense implications. Nevertheless, it will not prevent the development of closer cooperation between Member States of the EU in this area.

B. THE EUROPEAN PARLIAMENT

The most important institution to deal with civilian control of armed forces should be the European Parliament. It consists, at present, of 626 parliamentarians who are elected by direct universal suffrage from the peoples of the European Union. Therefore, it is the only institution which represents directly the European citizen at the EU level. The European Parliament is involved in the CFSP via Article 21 on TEU:⁹⁵

The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union’s foreign and security policy.

The European Parliament may ask questions of the Council or make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy.

Chapter XI of the Rules of Procedure of the European Parliament deals with international agreements, external representation of the Union and Common Foreign and Security Policy. Rule 101 of the Rules of Procedure of the European Parliament refers to the cooperation between the European Parliament and the High Representative. It states:⁹⁶

⁹⁵ See Article 21 TEU

⁹⁶ See Rule 101 of the Rules of Procedure of the European Parliament

(1) The High Representative shall be invited to make statements in Parliament at least four times a year. Rule 37 shall apply;

(2) The High Representative shall be invited at least four times a year to attend meetings of the committee responsible in order to make a statement and answer questions. The High Representative may also be invited on other occasions, whenever the committee considers this to be necessary, or at his initiative;

(3) Whenever a special representative is appointed by the Council with a mandate in relation to particular policy issues, he may be invited to make a statement to the committee responsible, at Parliament's or at his initiative.

Furthermore, the European Parliament created a standing committee, the Committee on Foreign Affairs, Humans Rights, Common Security and Defense Policy. This committee is, with regard to the Common Foreign and Security Policy, responsible for matters relating to:⁹⁷

(1) the common foreign and security policy of the European Union, including the task of formulating a common defense and disarmament policy (Article 11 of the EU Treaty);

(2) relations with the other institutions in the foreign policy sphere, and in particular with the High Representative for the common foreign and security policy;

(3) political aspects of relations with third countries and international organizations with regard to the implementation of the Union's foreign and security policy.

For the relations with the national parliaments, rule 55 (1) states "Parliament shall keep the national parliaments of the Member States regularly informed of its activities." Beside the general involvement of the EP in all aspects of the CFSP (which convenes for an annual debate on progress in implementing the common foreign and security policy) and the cooperation with the High Representative, further factors are necessary in order to implement an effective civilian control of armed forces. These factors of civilian control of armed forces are budgetary power and access to information, particularly access to classified material.

⁹⁷ See Annex VI of the Rules of Procedure of the European Parliament – The Powers and Responsibilities of Standing Committees. Point I

1. Budgetary Power

According to Article 276 (1) of the Treaty establishing the European Community,⁹⁸ the EP possesses the right to discharge the Commission the annual budget of the European Union. Annex V of the Rules of Procedure deals with the procedure for the consideration and adoption of decisions on the granting of discharge. In order to fulfill this part of civilian control, the European Parliament has established two standing committees. These committees are the Committee on Budgets and the Committee on Budgetary Control. The tasks of the Committee on Budgets are also annexed to the Rules of Procedure. In regards to the budgetary power of the European Parliament, the main responsibilities are:⁹⁹

- (1) The definition and exercise of Parliament's budgetary powers (Articles 268 to 273 of the EC Treaty) and the rules thereof dealing with establishment of the budget;
- (2) The budgets of the European Union, including the ECSC budget and of the European Development Fund;
- (3) The multi-annual estimates of the Union's revenue and expenditure and the inter-institutional agreements concluded in these matters and the implementation of budgetary conciliation;
- (4) Financial resources of the Union [...].

The Committee on Budgetary Control is responsible for:¹⁰⁰

- (1) The control of financial, budgetary and administrative implementing measures relating to the general budget of the European Union;
- (2) The control of the financial and administrative activities of the European Coal and Steel Community and the financial activities of the European Investment Bank carried out on the basis of instructions from the Commission;
- (3) The Financial Regulation in connection with matters relating to the implementation, management and control of budgets;
- (4) The decisions on discharge taken by Parliament and measures accompanying or implementing such decisions.

⁹⁸ Consolidated Version of the Treaty establishing the European Community (24 December 2002) is available at Internet Website http://europa.eu.int/eur-lex/en/treaties/dat/EC_consol.pdf from 31 May 2003

⁹⁹ See Annex VI of the Rules of Procedure of the European Parliament Point II

¹⁰⁰ See Annex VI of the Rules of Procedure of the European Parliament Point III

Regarding the Common Foreign and Security Policy, budgetary power of the EP is determined in Article 28 of the TEU. It states:¹⁰¹

[...]

(2) Administrative expenditure which the provisions relating to the areas referred to in this Title entail for the institutions, shall be charged to the budget of the European Communities;

(3) Operational expenditure, to which the implementation of those provisions gives rise, shall also be charged to the budget of the European Communities, except for such expenditure arising from operations having military or defense implications and cases where the Council acting unanimously decides otherwise.

To make the procedure of the budgetary power easier for all institutions involved, not only in CFSP, but also in all three pillars of the EU, the European Parliament, the Council and the Commission adopted on 6 May 1999 an Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure.¹⁰²

2. Access to Relevant Information

The other key issue of civilian control is access to relevant classified information. In general, consultation of and provision of information to the European Parliament within the framework of the CFSP is explained in rule 103 of the Rules of Procedure:

(1) Where Parliament is consulted pursuant to Article 21 of the EU Treaty, the matter shall be referred to the committee responsible which may make recommendations pursuant to Rule 104;¹⁰³

(2) The committees concerned shall seek to ensure that the High Representative for the common foreign and security policy, the Council and the Commission provide them with regular and timely information on the development and implementation of the Union's common foreign and security policy, on the costs envisaged each time that a decision entailing expenditure is adopted under that policy, and on any other financial considerations relating to the implementation of actions under that policy. Exceptionally, at the request of the Commission, the Council or the High Representative, a committee may decide to hold its proceedings in camera;

¹⁰¹ See Article 28 TEU

¹⁰² EU Document 1999/C 172/01 Internet Website http://europa.eu.int/eur-lex/pri/en/oj/dat/1999/c_172/c_17219990618en00010022.pdf from 31 May 2003

¹⁰³ Rule 104 states that the committee responsible for the common foreign and security policy may draw up recommendations to the Council in its areas of responsibility after obtaining authorization from the Conference of Presidents

(3) An annual debate shall be held on the consultative document established by the Council on the main aspects and basic choices of the common foreign and security policy, including the financial implications for the Union budget [...];

(4) The Council and/or the High Representative and the Commission shall be invited to each plenary debate that involves either foreign, security or defense policy.

The general agreement on public access to Council documents stems from 1993. With the development of its own military crisis management capabilities and particularly close cooperation with NATO, the Council of the EU amended this agreement and restricted public access to Council documents. This refers to documents that are “classified as top secret, secret, or confidential [...] on matters concerning the security and defense of the Union or of one or more of its Member States or on military or non-military crisis management.”¹⁰⁴ In this respect, Frederik Jensen stated, that NATO has “require[d] that the EU develop a means to limit the number of eyes that have access to some military secrets to a number less than 15, i.e., excluding access of some of the EU Member States.”¹⁰⁵ This paragraph likely refers to the four neutral and non-aligned Member States of the European Union that are not members of NATO. Regarding the Presidency Conclusion in Copenhagen in December 2002, the future EU Member States, Cyprus and Malta, both not members of the NATO Partnership for Peace Program, will have access only to classified information that “does not contain or refer to any classified NATO information.”¹⁰⁶ Jensen also noted that the Council had failed to satisfy the EP with promises of privileged access to information. That shortcoming was remedied on 20 November 2002, when the European Parliament signed an Interinstitutional Agreement between the EP and the Council concerning access by the EP to sensitive information of the Council in the field of security and defense policy. Point 2.2. of this agreement reads:

At the request of one of the persons referred to in point 3.1. below, the Presidency of the Council or the Secretary-General/High Representative

¹⁰⁴ See Council Decision amending Decision 93/731/EC on public access to Council documents. new Article 1 (1) Internet Website <http://register.consilium.eu.int/pdf/en/00/st10/10702en0.pdf> from 31 May 2003

¹⁰⁵ See Jensen, Frederik: Military secrecy in the EU Council provokes legal challenges. *European Security Review No 2*, Internet Website <http://www.isis-europe.org/isiseu/esreview/2000/oct2000.pdf> from 31 May 2003, p. 1

¹⁰⁶ See Annex II of the Presidency Conclusion – European Council Meeting in Copenhagen 12 and 13 December 2002 Internet Website <http://ue.eu.int/pressData/en/ec/73842.pdf> from 31 May 2003

shall inform them with all due dispatch of the content of the powers conferred on the European Parliament by the Treaty on European Union in the field covered by the present Interinstitutional Agreement, taking into account the public interest in matters relating to the security and defense of the European Union or of one or more of its Member States or military and non-military crisis management, in accordance with the arrangements laid down on section 3 below.

This agreement allows a Special Committee, which is “chaired by the Chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defense Policy and composed of four members designated by the Conference of Presidents”¹⁰⁷ access to restricted information.

C. SUMMARY

Full involvement of the national parliaments in the decision-making process for the deployment of armed forces abroad is only established in two Member States – Germany and the Netherlands – and with some respect in Austria. Within the other Member States it is carried out by other divisions of responsibility. As stated in Chapter II, the definition of civilian control of armed forces is the subordination of the military under democratically elected authorities. This means that in most of the Member States of the European Union, civilian control of armed forces is exercised in such a way that the parliaments are able to scrutinize the executives. The problem is not only a limited legitimacy, since the executive is not directly elected, but also “that even when national parliaments were given the power to scrutinize the action of their governments, they are not always making full use of it.”¹⁰⁸

The involvement of the European Parliament in civilian control of armed forces at the EU level is relatively weak. It encompasses the right to be consulted by the presidency and the Commission and the right to ask questions or make recommendations to the Council. Additionally, the High Representative is required to make statements in the European Parliament at least four times a year. The Parliament exercises its scrutiny via three committees – the Committee on Foreign Affairs, Humans Rights, Common

¹⁰⁷ Point 3.3. of the Interinstitutional Agreement Internet Website http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/c_298/c_29820021130en00010003.pdf from 31 May 2003

¹⁰⁸ See Working Group IV – Final Report on the role of the national parliaments. Point 11. Internet Website <http://register.consilium.eu.int/pdf/en/02/cv00/00353en2.pdf> from 31 May 2003

Security and Defense Policy, the Committee on Budgets, and the Committee on Budgetary Control. Access to relevant information is also limited as only a Special Committee has access to restricted information.

IV. CHALLENGES FOR THE EUROPEAN UNION

As described in the previous chapter, in the last four years the European Union developed institutions and mechanisms for crisis response. Nevertheless, the political leaders realized that there is still a lack of democratic legitimacy and transparency in the Union and its institutions. Therefore both the Nice Treaty, which entered into force on 1 February 2003, and the conclusions of the European Council at Laeken referred to this issue. The Treaty of Nice states in Point 6 of its Declaration No 23 of the future of the Union “[...] the Conference recognizes the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizen of the Member States.”¹⁰⁹ The Heads of State and Government agreed in Laeken to convene a Convention, which has to deal with the future of Europe.¹¹⁰ However, because of the mentioned lack of democratic legitimacy and transparency, and beside the work of the European Convention, the European Union still faces some challenges regarding an effective civilian control of armed forces in the European Union. These challenges are, among others:

- Weak involvement of the national parliaments;
- Restricted access to classified information for both the national parliaments and the European Parliament;
- Restricted rights of oversight and scrutiny of the European Parliament;
- Different security status of the Member States of the EU.

A. WEAK INVOLVEMENT OF NATIONAL PARLIAMENTS

The involvement of national parliaments in CFSP is relatively weak. A first reason is the role of the national parliaments concerning the decision of deployment of military troops. As mentioned in Chapter II, only two parliaments of the Member States of the European Union are involved in the particular decision making process. For the

¹⁰⁹ See Treaty of Nice Internet Website http://europa.eu.int/eur-lex/en/treaties/dat/nice_treaty_en.pdf from 31 May 2003

¹¹⁰ See Annex I of the Presidency Conclusion – European Council Meeting in Laeken 14 and 15 December 2001, Internet Website <http://ue.eu.int/pressData/en/ec/68827.pdf> from 31 May 2003

other Member States, parliamentary approval is in retrospective. One question, which should be answered by the Convention, is “how should the role of the national parliaments regarding democratic legitimacy be defined?”¹¹¹ In its final report, “The role of national parliaments,” Working Group IV of the Convention acknowledged that “even when national parliaments were given the power to scrutinize the actions of their governments, they were not always making full use of it.”¹¹² Nevertheless, despite the fact of different systems for national parliamentary scrutiny, most of the governments of the EU Member States agreed that scrutiny of CFSP will, in the near future, remain the role of national parliaments. In this respect, the quotations range from “the national parliaments will have a crucial role to play in proper parliamentary scrutiny of security and defense decisions”¹¹³ together with, “given the Euro-governmental nature of CFSP, it is not yet possible to talk of scrutiny in the strictly sense, other than by the national parliaments”¹¹⁴ to “[...] it is right, that primary responsibility for scrutinizing ESDP should lie with national parliaments.”¹¹⁵ In addition, it seems that, by and large, the Member States assess the retrospective approval of their governments’ decisions as sufficient. Only the Defense Committee of the French National Assembly proposed a new wording of its Article 35 of the French Constitution: ¹¹⁶

The deployment of French armed forces outside the national territory shall be subject to the prior consultation of Parliament according to conditions laid down by an institutional act. The participation of such forces in peacekeeping, peacemaking or peace enforcement operations that are not the express subject of a decision by the United Nations Security Council or which do not result from the application of a defense agreement shall be subject to the prior authorization of Parliament.

The second reason for the weak involvement of the national parliaments in ESDP and parliamentary scrutiny is their lack of information. As the report of the Assembly of

¹¹¹ *ibid*

¹¹² See Working Group IV – Final Report on the role of the national parliaments, Point 11

¹¹³ Luxembourg’s Minister for Foreign Affairs Mrs. Polfer on 17 January 2002, quoted in Assembly of Western European Union, Document A/1780, Internet Website http://www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2002/1780.pdf from 31 May 2003, Point 7

¹¹⁴ Spanish’ Defense Minister Trillo-Figueroa y Martinez-Conde on 6 February 2002, quoted in Assembly of Western European Union, Document A/1780, Point 9

¹¹⁵ UK’s Parliamentary Under Secretary of State, Mr. Bradshaw on behalf of the Foreign Secretary, quoted in Assembly of Western European Union, Document A/1780, Point 11

¹¹⁶ Quoted in Western European Union, Document A/1780, Point 17

Western European Union about the parliamentary dimension of the ESDP states, “[...] as far as ESDP issues are concerned, each government informs parliament on a bilateral basis only. The only way national parliaments come to hear directly about the opinion-forming process in, and perceptions of, the other governments and parliaments is through occasional contacts with them on an individual basis.”¹¹⁷ The main problem that exists in this respect is described best by the Assembly of Western European Union in its contribution to the Convention regarding the role of national parliaments in the EU: “Each national parliament is required to give its views on the budget contributions of its country to any EU-led military operations and on the deployment of troops for such operations, without having direct access to information about the decision-making process at European level.”¹¹⁸

On 14 May 2001, the Dutch Parliament organized in The Hague a seminar on the parliamentary dimension of the ESDP. Five different options to deal with the lack of information were discussed:¹¹⁹

1. Full competence for the European Parliament in the second as well as in the first pillar of the EU [...];
2. Creation of a mixed Assembly, with the 15 EU states as full members but meeting at 28¹²⁰ and including both national parliamentarians and a sufficient number of members of the European Parliament;
3. Continuation of the present practice of the European Parliament under Article 21 and leave the ESDP entirely to the WEU Assembly in its present form;

¹¹⁷ See Assembly of Western European Union, Document A/1752, Internet Website http://www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2001/1752.pdf from 31 May 2003, Point 9

¹¹⁸ See Assembly of Western European Union, Document A/1778, Internet Website http://www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2002/1778.pdf from 31 May 2003, Point 79

¹¹⁹ *ibid*, Point 14

¹²⁰ The “28” means all Member States, Associate Members, Associate Partners, and Observers of the Western European Union

4. Meetings of national delegations to be informed by the country holding the Presidency (the COSAC¹²¹ model but consisting of members of standing committees for defense and foreign affairs);
5. No multinational oversight at all.

The debate focused especially on options 2 and 3 because “a large majority of the participants did not think a COSAC-type arrangement as described in option 4 would be appropriate for making good the democratic deficit that exists under the ESDP.”¹²² On the contrary, both of the final reports of Working Group IV, “The Role of the National Parliaments” and Working Group VIII, “Defense”, preferred a COSAC like model. Working Group IV agreed in its final report that “a more systematic exchange of information between national parliaments about methods and experiences could play an essential role in increasing knowledge and awareness of European affairs and thus improve further the efficiency of national parliamentary scrutiny.”¹²³ Parliamentary scrutiny of security and defense policy is exercised according to the final report of Working Group VIII, by the European Parliament and the national parliaments. The latter are recommended to organize regular meetings of the relevant committees to ensure better exchanges of information and more effective political scrutiny.¹²⁴ To coordinate the viewpoints of the national parliaments and the European Parliament, the EP proposed bi-annual regular meetings between the Competent Committee of the European Parliament and representatives of the respective committees of national parliaments.¹²⁵ The same proposal came from Working Group VII, “External Relations”. The group

¹²¹ COSAC is the French abbreviation of the Conference of the Community and European Affairs Committees of Parliaments of the EU – “Conférence des organes spécialisés dans les affaires communautaires”. This Conference is a convention of members of the national parliaments as well as the European Parliament at least once each presidency. COSAC enables a regular exchange of views, without prejudicing the competencies of the parliamentary bodies of the European Union.

¹²² See Western European Union, Document A/1752, Point 15

¹²³ See Working Group IV – Final Report on the role of the national parliaments, Point 11

¹²⁴ See Working Group VIII – Defense, Final report, Internet Website <http://register.consilium.eu.int/pdf/en/02/cv00/00461en2.pdf> from 31 May 2003, Point 73

¹²⁵ See Report of the European Parliament on the new European Security and defense architecture – priorities and deficiencies. Internet Website <http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//NONSGML+REPORT+A5-2003-0111+0+DOC+PDF+V0//EN&L=EN&LEVEL=2&NAV=S&LSTDOC=Y> from 31 May 2003, Point 58

agreed that “regular exchanges of views between the European Parliament and national parliaments on CFSP issues should be ensured.”¹²⁶

B. ACCESS TO RELEVANT INFORMATION

The second challenge the European Union faces regarding an effective civilian control of armed forces is the restricted access to classified information. The national parliaments are excluded from this access, at least at the European Union level. The possibility for the national parliaments lies mainly in the establishment or convention of a committee of inquiry to scrutinize decisions from the national executive. Another means of control is the budgetary process executed by the Member States of the EU, which oversees the financing of crisis management operations. But as mentioned before, the main obstacle remains the lack of information to the national parliaments.

At EU level, the European Parliament and the Council approved a new agreement on 20 November 2002, to get access to sensitive information, but there remain some points of criticism. One point of criticism is that this access is only granted to the members of a certain committee. These members are not authorized to share Top Secret information with other members of the European Parliament¹²⁷ or in the framework of COSAC with the representatives of the national parliaments. In addition, sharing other confidential or secret information is also restricted to four options:¹²⁸

1. information intended for the chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defense Policy;
2. access to information restricted to the members of the Committee on Foreign Affairs, Human Rights, Common Security and Defense Policy only;
3. discussion in the Committee on Foreign Affairs, Human Rights, Common Security and Defense Policy, meeting in camera, in accordance with arrangements which may vary by virtue of the degree of confidentiality involved;
4. communication of documents from which information has been expunged in the light of the degree of secrecy required.

¹²⁶ See Working Group VII – External Action, Final report, Internet Website <http://register.consilium.eu.int/pdf/en/02/cv00/00459en2.pdf> from 31 May 2003, Point 60

¹²⁷ See Point 3.3. of the Interinstitutional Agreement

¹²⁸ *ibid*

As Malin Tappert states, “Effective parliamentary scrutiny of ESDP would require that this committee parliament [sic] has sufficient expertise to process and assess the information it is provided with.”¹²⁹ At least for Top Secret information, despite the expertise of the five members of the special committee, this conclusion is doubtful.

Another point of criticism is that “information originating from a third State or international organization shall be transmitted with the agreement of that State or organization.”¹³⁰ This results in an extensive veto power for third parties.

To increase the amount of information available for the European Parliament, it required in its “Report on the progress achieved in the implementation of the common foreign and security policy” from 11 September 2002 that “the Council presidency [...] should be answerable on writing on the basis of specific recommendations by the Parliament, notably in questions of security and defense policy.”¹³¹

C. OVERSIGHT AND SCRUTINY OF THE EUROPEAN PARLIAMENT

As shown in Chapter II, the right of parliamentary oversight and scrutiny is limited for the European Parliament. There are weak consultation obligations according to Article 21 of the TEU and some budgetary powers according to Article 28 of the TEU.

Article 21 states that the Presidency shall consult the European Parliament on the main aspects and the main choices of the common foreign and security policy. However, the main actors of the CFSP are the Member States and at EU level the European Council, which defines the principles of and the general guidelines for the CFSP. The Presidency is, according to Article 18 (2), only responsible for the implementation of the decision taken under Title V of the Treaty of the European Union. Therefore, the European Parliament can only address the institution which is responsible for the

¹²⁹ Tappert, Malin: European Parliament resigned to limited oversight of ESDP? *European Security Review Number 16*, Internet Website <http://www.isis-europe.org/isiseu/esreview/2003/ESR16.pdf> from 31 May 2003 p. 9

¹³⁰ Point 1.2. of the Interinstitutional Agreement

¹³¹ See Report of the European Parliament on the progress achieved in the implementation of the common foreign and security policy. Internet Website <http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//NONSGML+REPORT+A5-2002-0296+0+DOC+PDF+V0//EN&L=EN&LEVEL=3&NAV=S&LSTDOC=Y> from 31 May 2003, page 24

execution of decisions in CFSP, but not the institution which decides at the EU level. The “Draft Articles on external action in the Constitutional Treaty”, which were presented by the Convention on 23 April 2003, slightly changed the wording of Article 21. It now states that, “The European Parliament shall be consulted [...]”¹³² Nevertheless, the comments to this article make a reference to the final report of Working Group VII External Action. The Working Group’s conclusion was that “The Working Group recognized that the current provisions of Art. 21 TEU relating to CFSP were satisfactory.”¹³³

Article 13 (1) of Part II – Title B clarifies to whom this obligation of consultation is addressed. It states “The Minister for Foreign Affairs shall consult the European Parliament [...]” The comment to this article states that “The Working Group recognized that the current provisions of Article 21 TEU were satisfactory, but that they should, however, be supplemented to include the participation of the Minister of Foreign Affairs in the tasks described in Article 21 TEU.” The new wording of Article 13 (1) improves parliamentary scrutiny for the European Parliament. According to Article 201 of TEU, the European Parliament has the right of a motion of censure on the activities of the Commission. The “Draft Articles for Title IV of Part I of the Constitution”¹³⁴ took over this wording into Article 18a (3) “The Commission, as a body, shall be responsible to the European Parliament. Under the procedures set out at Art. X of the Constitution, it may pass a censure motion on the Commission. If such a motion is passed, the members of the Commission must all resign [...]” Article 19 (3) determines that the Foreign Minister, who will be responsible for handling external relations and for coordinating other aspects of the Union’s external action, will also be one of the Vice-Presidents of the Commission. Therefore, the European Parliament now has the possibility to pass a censure motion against the institution which decides in CFSP issues at the EU level. This action was not possible with the High Representative for CFSP. The European Parliament requested in its “Report on the new European security and defense architecture – priorities and

¹³² See Article 29 (6) of Part I – Title V of the “Draft Articles on external action on the Constitutional Treaty”

¹³³ See Working Group VII – External action, Final report, point 10

¹³⁴ Available at Internet Website <http://european-convention.eu.int/docs/Treaty/cv00691.en03.pdf> from 31 May 2003

deficiencies” from 27 March 2003, that “Article 21 of the TEU [should] not be limited to foreign and security policy but also include defense policy, which in practice already happens when the Defense Minister of the Presidency reports to the European Parliament.”¹³⁵ The “Draft Article on external action in the Constitutional Treaty” provides explicitly, with Article 30, a separate article about “Common security and defense policy”. The European Parliament is involved in the same way as within the CFSP. Article 30 (8) states, “The European Parliament shall be consulted on the main aspects and basic choices of the common security and defense policy, and shall be kept informed of how it develops.”

Article 28 TEU, which deals with the budgetary power of the EP, should, in the opinion of the European Parliament, “be revised, since a subsidiary budget in the Council can be controlled neither by the national parliaments nor by the European Parliament. This is unacceptable, also from the point of view of democratic control.”¹³⁶ This is necessary because “in military operations within the framework of ESDP joint cost (for instance, for headquarters – transport, accommodation, equipment and communications facilities) should be borne jointly and also entered in the Community budget.”¹³⁷ Furthermore, the European Parliament demanded that “any crisis management operation of the Union in the context of the Petersberg task should be decided by the Council only after consultation of the European Parliament as the only directly elected democratic institution at European level; such approval would require an absolute majority.”¹³⁸

D. DIFFERENT SECURITY STATUS OF THE MEMBER STATES

The different status of the Member States also weakens the chance of effective civilian control. According to the European Council in Edinburgh on 12 December 1992, Denmark is not participating in CFSP.¹³⁹ The future EU Member States Cyprus and

¹³⁵ See Point 61 of the report

¹³⁶ See Report of the European Parliament on the progress achieved in the implementation of the common foreign and security policy, page 24

¹³⁷ *ibid*, page 24

¹³⁸ See Point 55 of the report

¹³⁹ Nevertheless, for the EU Police Mission in Bosnia and Herzegovina, Denmark addressed 13 persons to the troop contingency. See EUPM Selection Process as of 20 November 2002 Internet Website <http://ue.eu.int/eupm/pdf/tableauPersonnel.pdf> from 31 May 2003

Malta, which both do not participate in the Partnership for Peace Program, will have no access to NATO classified information provided to the European Parliament

The new constitution drafts a structured cooperation for “those Member States which fulfill higher criteria for military capabilities and which have made more binding commitments to one another in this area with a view to more demanding tasks.”¹⁴⁰ In addition, Article 30 (7) of Part I – Title V and Article 21 of Part II – Title B of the drafted constitution refer to a mutual defense within the framework of the EU. However, it does not imply that the Member States which participate in structured cooperation are the same that oblige themselves to a mutual defense. Lastly, the Government of Ireland has reaffirmed its commitment to its people to hold a referendum in the case of any decision of the Union to move to a common defense.¹⁴¹ Therefore, the current and future framework of foreign and security policy of the EU allows many different possibilities of cooperation of the Member States. This fact makes effective civilian control more difficult. A recent example for this development was the “Mini Defense Summit” of Belgium, France, Germany, and Luxemburg on 29 April 2003. It seems that because of the reluctance of some Member States to grant more rights to the European Union, the path of development is similar to that of the common currency, where some Member States participate and others not. In general, the decisions regarding the CFSP are taken by the European Council and the Council of Ministers unanimously.¹⁴² Nevertheless, Member States have the possibility to abstain from a unanimous decision, which “shall not prevent the adoption of such decision.”¹⁴³

E. SUMMARY

The challenges for the European Union regarding the efficient and sufficient civilian control of armed forces analyzed in this chapter, encompass the weak

¹⁴⁰ See Article 30 (6) of the Draft Articles on external action in the Constitutional Treaty

¹⁴¹ See Annex III “National Declaration by Ireland” of the Presidency Conclusions – European Council Meeting in Seville, 21 and 22 June 2002 Internet Website <http://ue.eu.int/pressData/en/ec/71212.pdf> from 31 May 2003

¹⁴² See Article 29 (7) of the Draft Articles on external action in the Constitutional Treaty

¹⁴³ *ibid*, Article 9 (1)

involvement of the national parliaments, the restricted access to classified information for both the national parliaments and the European Parliament, the restricted right of oversight and scrutiny of the European Parliament, and the difference in security status of the Member States of the European Union. The two main reasons for the weak involvement of the national parliaments are first, that most of them do not participate in the decision-making process and second, the lack of information. Access to relevant information is also a problem for the European Parliament. It is only granted to a special committee, which consists of five members. These members are not allowed to share Top Secret information with the other members of the parliament. The rights of the European Parliament in oversight and scrutiny have not greatly changed from the current Treaty of Nice to the drafted proposals for an EU constitution. The only two differences are that the Foreign Minister of the EU will be Vice-President of the Commission, which includes the possibility of a motion of censure, and the second change is that the Constitution also includes a common security and defense policy. Here the EP has also the right to be informed. The differences in the security status of each of the Member States will likely remain, and probably increase, since the Constitution now allows a structured cooperation of Member States in security and defense areas.

V. CONCLUSION

In the last century, several scholars have offered different theoretical frameworks for civilian control of armed forces which shows that there is no single concept. Samuel Huntington divided his theory between subjective and objective civilian control and preferred the latter as the maximizing of military professionalism. Morris Janowitz's theory of civilian control predicted that armed forces would transform into constabulary forces, which have to operate on an international level. Charles Moskos sought to link these two concepts and argued that some services of the military forces have converged more closely with the political leadership while other services have only a weak relationship. In this paper it was shown that at the EU level "civilian control" and "democratic control" are interchangeable. The reasons are the Treaty on European Union itself and the necessity for states which apply for EU membership to be democracies. With the development of the Common Foreign and Security Policy, the EU also implemented Committees and a Military Staff, which are responsible for its execution. A comparison showed how the theoretical frameworks of civilian control match with the political system of the EU. It has demonstrated that the concept of civilian control, which was developed for nation states, fits to the political system of the European Union. The main aspect regarding civilian control is the responsibility of the institutions, which are in charge for the implementation of the CFSP to the respective parliaments. Since the European Union is a unique organization, these responsibilities are divided between the Member States and the EU itself.

The definition of civilian control of armed forces used in this thesis referred to the accountability of the institution, which decides on the deployment of military troops, to their respective parliament. A comparison of the involvement of the national parliaments of the Member States has shown that full involvement of the national parliaments in the decision-making process for the deployment of armed forces abroad is only established in two Member States, Germany and the Netherlands, and with some respect in Austria. Within the other Member States, it is carried out by the respective governments. This means, that in most of the Member States of the European Union, civilian control of armed forces is exercised in the way that the parliaments scrutinize the governments *ex*

post. The problem is not only a limited legitimacy, since the government is not directly elected, but also that the national parliaments do not always fully use their possibilities to scrutinize the actions of governments.

The involvement of the European Parliament in civilian control of armed forces at the EU level is relatively weak. It encompasses the right to be consulted by the presidency and the Commission and the right to ask questions or make recommendations to the Council. Additionally, the High Representative is obliged to make statements in the European Parliament at least four times a year. The EP exercises its scrutiny via three committees – the Committee on Foreign Affairs, Humans Rights, Common Security and Defense Policy, the Committee on Budgets, and the Committee on Budgetary Control. The main problem is the access to restricted information, which is limited only to a Special Committee, which consists of five members. These members are not allowed to share Top Secret information with the other members of the Parliament. The rights of the European Parliament in oversight and scrutiny have not greatly changed from the current Treaty of Nice to the drafted proposals for an EU Constitution. This gives evidence of some reluctance of the Member States' governments to hand over responsibility to the elected representatives. The main difference is that the Foreign Minister of the EU will be Vice-President of the Commission, which now allows the European Parliament the possibility of a motion of censure. Since this motion of censure concerns the European Commission, it is an instrument which will be used very carefully by the European Parliament.

These findings lead to some proposals which will be able to rectify some deficiencies in the area of civilian control of armed forces. The first proposal is the formal participation of representatives of the national parliaments in the information sharing of CFSP issues at EU level. This would allow the coordination of parliamentary initiative between the national level and the European Union. A second proposal is the involvement of the European Parliament in the development of common strategies of the European Council. The development of common strategies is not an ad-hoc decision but rather, it normally lasts months. Therefore, to increase democratic legitimacy, it is easy to arrange that the EP, or at least a committee, is included in this development. Finally, censure rules, calling for the resignation of the Commission, should be limited to single

commissioners to increase the power of the motion of censure. This would increase the power of the EP regarding the Commission not only in the area of CFSP but also in the other policy fields.

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